

1994 Ky. Op. Atty. Gen. 2-115, Ky. OAG 94-44, 1994 WL 327530 (Ky.A.G.)

Office of the Attorney General  
Commonwealth of Kentucky

OAG 94-44

June 27, 1994

Re: Effect of Fiscal Court's Denial of Cost of Living Increase on Salary of County Judge/Executive Where County Clerk and Sheriff Fees Permit Them to Claim Maximum Allowable Salary. AGO Corr. No. 93-(0)-925.

Hon. Alan C. Stout  
Crittenden County Attorney  
P. O. Box 81  
Marion, Kentucky 42064

Dear Mr. Stout:

First, my apologies for the lengthy delay in responding to your request.

By letter of June 28, 1993, you asked, in substance, whether, given [KRS 67.705](#), the county judge/executive could be paid less in annual compensation than the salary drawn by the county clerk and county sheriff.

In our view the likely answer is no. Discussion follows.

As explained in your letter, the statutory fees of the county clerk and sheriff are sufficient to allow them to claim the maximum annual compensation allowed by the Constitution of Kentucky. At the same time, the fiscal court has passed a motion to deny a cost of living increase to all elected county officials.

[KRS 67.705\(3\)](#) provides that:

Except in urban-county governments, the minimum annual compensation paid to the county judge/executive shall be the greater of a sum not less than sixty percent (60%) of the maximum compensation certified under [KRS 64.527](#), or not less than the annual compensation of the sheriff or county clerk or jailer in the county, except that no fiscal court shall be required under provisions of this section to approve an amount for the compensation of any one official which would exceed six percent (6%) of the county's total annual general fund receipts including federal revenue sharing moneys.

First, the county clerk and sheriff, as fee officers, have a statutory entitlement to their fees. They may apply fees they collect to their salary without action of the fiscal court. See Opinion of the Attorney General (OAG) 84-54 (copy enclosed).

Second, [KRS 67.705](#) establishes the standards by which the salary of the county judge/executive is to be set.

It is axiomatic that a fiscal court cannot do that which is in conflict with the statutes. If the fiscal court passes a

motion denying a cost of living increase to all elected officials of the county, and thereby seeks to prevent payment from the county treasury to the county judge/executive of the amount to which he or she would be entitled pursuant to [KRS 67.705](#), the motion would, in our view, be in violation of [KRS 67.705](#). Of related interest see OAG 84-381 (copy enclosed), indicating that a county judge/executive cannot refuse to accept the mandatory salary provided by [KRS 67.705](#) and [KRS 64.527](#), and that he (or she) must be paid back pay for any year in which he or she was not paid the amount required by statute.

We do not have information to determine whether the maximum allowable salary for a county officer would exceed six percent of the county's total annual general fund receipts, so as to bring the language of [KRS 67.705\(3\)](#) in such regard into play.

**\*2** Of possibly related interest see OAG 94-7 (copy enclosed) concerning the maximum allowable compensation of county elected officers for 1994.

Sincerely,  
Chris Gorman  
Attorney General

Gerard R. Gerhard  
Assistant Attorney General

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